

PROTECTION OF WHISTLEBLOWERS- CAN WHISTLEBLOWERS EXPECT BENEFITS?

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Abstract— This study aims to provide an overview of the result of the legislative intention, which also set a mandatory deadline for the application of large companies employing more than 250 people, since they must apply the Act XXV of 2023 on complaints, reporting legal breaches starting from July 24, 2023. Above complaints, public interest reports, and the rules on whistleblowing this act and subject contains the regulation of the duties of the lawyer protecting whistleblowers.

The purpose of the article is to point out, based on the review of international scientific literature, of seconder research, that whistleblowing protection is an important tool to and reporting are especially supporting tools for the organizations, working places, employees and employers. The protection of whistleblowers is an important means of strengthening organizational security. It is not disputed that the higher the level of trust in the organization, the safer the organization.

Trust and security are interrelated concepts and phenomena. This study aims to present one area of organizational security through the institution of the whistleblower protection lawyer. The article can be of help to theoretical and practical specialists dealing with the subject trust, security and legal regulations.

Index Terms— *whistleblowing act, report, protection, organizational security*

INTRODUCTION

The most important characteristics of social norms show the essential criteria which, if they exist together, we can only speak about a norm. These are generality, repetition, hypothetical structure, validity, reciprocity, and sanctionability.

Moral norms can be considered as special type of social norms. Unlike other norms - which are typically formed as a result of external circumstances - the moral norm originates from within, the distinction between good and bad arising from human quality. This can include everything from respect for human life to manifestations of the relationship to property, and the judgment of behaviors shown in certain repeated situations in larger and smaller social groups.

A special type of social norms is the legal norm. The basic distinguishing features of the legal norm include its general nature and the fact that it prescribes mandatory rules of conduct for all

members of the community, which the state creates and ensures their enforcement. (Gulyás et al, 2018)

In the following, the article reviews the legal norm system of whistleblowing, with special regard to the whistleblower protection rules of the European Union and Hungary.

Literature review

In October 2019, the European Union adopted the Directive on the protection of persons who report breaches of Union law, commonly referred to as protection of whistleblowers (EU Whistleblower Directive).

For over a decade, the European Parliament had repeatedly called for a European Union (EU) law on protection of whistleblowers. Yet, the other EU legislative institutions, the European Commission and the Council, were unwilling to act on these calls. The European Commission was not convinced that it had the legal basis to propose a law.

The EU Whistleblower Directive fills an important legislative gap. Its adoption was the result of a few decades of incremental change in Europe towards advancing the protection of whistleblowers. Advocacy by civil society was a significant factor in raising public awareness and public pressure for legal changes to take place. At the European level, the most important legal developments came from the Council of Europe (CoE) and the European Court of Human Rights (ECtHR). The CoE adopted a number of Resolutions and reports calling on its MSs to protect whistleblowers and the ECtHR decided in favour of whistleblowers in several decisions on the basis of protection for freedom of expression.

In recent times, whistleblowing has become the predominant manner of instigating accountability for some of the most pressing problems in our societies. Although whistleblowing serves the public interest, too often the individuals behind these disclosures are delegitimised and experience harassment and retaliation. The EU Whistleblower Directive is the first EU law to provide protection to whistleblowers across the EU, covering 12 policy fields, adopting a wide definition of who can be a whistleblower, and including both the public and private sector. In many regards, as this note has shown, the EU Whistleblower Directive builds on global best practice and ensures high standards of protection. In its two-year transposition period, and with a transposition deadline of 17 December 2021, Member States have a chance to build upon these standards and fill some of the legislative gaps that the Directive leaves open. Towards that aim, it is hoped that trade unions will play an active role in empowering whistleblowers' voices and advancing protection, not only through law but also through organisational culture. (Abazi, 2020)

However, there is another, less rational, and basically not consciously chosen version of retaliation for reporting, which many people practice against the whistleblower in many ways. If the report is made in a more serious matter that harms the organization's direct interests and external perception in the short term, it inevitably breaks and, in the best case, seriously tests the trust between the reporter and his managers, as well as between the reporter and his colleagues. (Nagy, 2017)

The basic interest of employers is to improve their market reputation, reliability and credit, and at the same time to increase their profit. It works against them if the corrupt person prioritizes his own interests to the detriment of the employer. The good reputation of companies and public administration institutions involved in corruption cases can thus be easily damaged, which in the case of companies affects their relationships with business and other partners and customers, and in the case of public institutions, it can lead to a loss of credibility and even influence the outcome of elections. For this reason, it is not in the interest of any organization to have its internal affairs turn into a scandal made public by the press due to the lack of a proper internal investigation or due to inadequate handling of the problem. This is called "stiff test" in the American literature, which roughly means "hardness test".

Since the design of the system also involves IT developments, companies' resistance to external and internal data theft can increase significantly.

A long-term advantage is that external trust in the employer can significantly increase by building a suitable whistleblowing system, which is one of the most difficult segments of the employer's perception.

While in the Anglo-Saxon countries the perception of public interest whistleblowers is basically positive, individualism and independent action are accepted values when reporting Anglo-Saxon employees, while in Central and Eastern Europe many more social conventions and traditions restrict employees, which can hinder individual statements in the against errors and problems. In addition, the situation is complicated by the fact that the whistleblower systems built in socialism are still alive in the public memory, and this can raise suspicions against any whistleblower system, especially if reports can be made anonymously. Therefore, when designing the protection of whistleblowers and introducing it into society, the history and culture of the given country and, if possible, the sensitivity of individual people to the topic must be taken into account. A long-term investment for companies. The development of whistleblowing systems is also important in the Central European region, as the risk of breach within the employer, especially corruption and fraudulent acts, is still high. However, for this it is important that the employees themselves are also interested and committed in maintaining the system, since ethical operation can be ensured based on their reports. This can be achieved through trainings and information dissemination, and the appropriate legal environment is also essential.

It is desirable that a whistleblowing law provides as many ways as possible for whistleblowers to make their public interest announcements, but at the same time, in our opinion, this does not need to extend to announcements published publicly by the user on social media. The announcement published on social media has many advantages: it is quick, simple, the announcement can reach the general public, and it can even be done anonymously. At the same time, these advantages represent serious challenges for the public sector. The main reason for this is that anyone can upload anything to social media, the given announcement is not subject to any kind of control, which in our opinion represents a disproportionate risk to trust in the public sector.

In some cases, they can even be considered outright heroes. An example of this is Sherron

Watkins, who was named "Man of the Year" by Time magazine in 2002 after the Enron scandal broke out. 308 In view of this, we would recommend the Latin-derived name "insinator" for the whistleblower in the public interest.

The public announcement made by the notifier/user on social media (Van Ees&Smit, 2003) (Callahan&Dorkin, 1994) (Latan et al, 2021) has several advantages and disadvantages, which are contained in the following SWOT analysis (Table No. 1). (Hajdú&Lukács, 2019)

Table 1.: SWOT analysis: making an announcement on social media SWOT analysis
Source: Hajdú&Lukács, 2019

Positive	Negative
Strengths	Weaknesses
Whistleblowing regulations also apply to the public sector; The rise of an integrity approach in public administration	Public sector workers do not know where to turn; They consider the procedure too bureaucratic; Even if they experience breach, they don't report it; Lack of independent authority
Opportunities	Dangers
Availability and ease of use of social media Social media popularity	Content is uncontrollable Bad faith/unfounded report

Table 1.: SWOT analysis: making an announcement on social media SWOT analysis Source: Hajdú&Lukács, 2019

Apasa&Chang's (2011) project analyzes two cases to ascertain the factors that make for effective whistleblowing. Their study concludes that external whistleblowing, mass media publicity, and strong evidence are essential components of effective whistleblowing. When there is a lack of proper legal protection, whistleblowers experience brutal retaliation even if the whistleblowing actions successfully stop wrongdoing. (Apasa&Chang, 2011)

In order to make a whistleblower report, one must know where to make a report and have the courage to make the report. The purpose of Nagy's (2017) article is to present a) the channels through which government officials can deliver their reports from the authorities, and

b) the factors that influence the degree of risk of reporting in relation to each channel. (Nagy, 2017)

Hungarian economic organizations are generally characterized by weak and medium risk-taking. Successful companies are more risk-taking than average, and their risk-taking continues to increase during the crisis, while among unsuccessful companies, the crisis has a negative effect on risk-taking and its perception. The results confirmed the previously revealed correlations: those organizations and managers are the most successful even during the crisis period, who evaluate their situation more realistically, take an initiative role, are capable of renewal, innovation and adaptive risk-taking. Based on this research, a proposal can also be formulated for managers: for the sake of success and renewal, organizations should take risks

more courageously and strive to improve their understanding of their situation and the accuracy of their value judgments. (Kadi, 2016)

Discussion

In order to further explain the topic, it is necessary to investigate the risks. CSR identifies the following as risky human rights situations in accordance with the relevant UN guidelines based on the ISO 26000 standard.

- political uncertainty
- negative impact on natural resources
- vulnerable groups
- corruption

It expects responsible organizational operations to act with due care when reviewing business (organizational) processes, and to continuously monitor and evaluate factors that may pose a threat to human rights. Both in terms of political and civil rights, as well as economic, social and cultural rights.

Regarding organizational integrity, we will discuss two topics below, vulnerable groups and corruption.

In the case of aiding and abetting, three situations need to be analyzed:

- direct: the organization benefits from knowingly participating in the violation of human rights
- beneficial: the organization directly benefits from someone else violating human rights norms
- quiet: there is no record of breaking the norm, but the organization benefits from it

In this respect, the requirement of integrity also means that the organization is responsible for dealing with partners who do not violate human rights in any way. Therefore, it envisages cooperation with irreproachable partners. (Herendy-Kriskó, 2017)

The whistleblower protection's first striking claim is that the act according to the regulations of 13. §, any measure that is detrimental to the public interest/breach whistleblower, which takes place due to the public interest/breach report - with the exception of the measures contained in 6. § (4) - is considered illegal even if it would otherwise be legal.

The provision makes it clear that the penalty for disadvantaging whistleblowers in the public interest/breach report is the illegality of the measure causing the disadvantage. Based on this, additional sanctions are also applicable.

The employee can initiate an employment lawsuit against the employer's decision.

A public interest whistleblower is considered to be a public interest whistleblower - with the exception of a whistleblower who discloses false data or information in bad faith - a public interest whistleblower whose living conditions are likely to be seriously endangered due to the public interest/breach report he/she has made.

A natural person whistleblower is entitled to whistleblower protection subsidies defined by law if it is probable that they are at risk. Act 2003 LXXX. on legal assistance to public interest

whistleblowers provides subsidies specified in the law (hereinafter: Jstv.) according to the conditions specified therein. For more information (conditions for legal assistance, application form, list of legal assistance providers, contact details), visit <https://igazsagugyiinformaciok.kormany.hu/jogi-segitsegnyujtas>. The range of subsidies according to the law:

A. Out-of-court grants

The legal assistant provides legal advice for the party or prepares submissions and other documents, as well as examines the documents of his case on the basis of the relevant authorization (hereinafter together: legal service), whose fees and costs to the extent defined by law (hereinafter together: legal service fee) are paid by the the state pays or advances to the legal assistant instead of the party.

B. Support in civil and administrative proceedings

In the framework of legal assistance, the state in civil litigation and - with the exception of enforcement proceedings - non-litigation proceedings, as well as in administrative proceedings, other administrative court proceedings and administrative non-litigious proceedings (hereinafter together: litigation) the plaintiff, the defendant, the intervener, provides defense attorney representation for the interested party, the applicant and the requested party and advances or bears the cost of this on behalf of the party.

C. Grants in Criminal Proceedings

The state provides legal assistance in criminal proceedings in accordance with Jstv. If the conditions set out in § 18 and § 19 are met, it provides the following subsidies:

- a) advance by the state of the defense lawyer's fee and costs (hereinafter: defense lawyer's fee) for the injured party, the private plaintiff, the substitute private defendant, the private party, the property interested party and other interested parties and, in the case specified by law;
- b) advance and payment by the state of the fee and costs of the appointed defense counsel for the defendant. (ajbh.hu)

As we have seen, the primary purpose of the legal regulation of whistleblowing is to guarantee the social and individual interest in protecting the whistleblower. The currently effective Hungarian legal system - within the framework of the Complaints Act - provides for the regulation of explicit private and administrative legal protection tools. However, it is important to see that the domestic legal system protects the whistleblower in the public interest on several levels. Until decriminalization in 2012, the penal code ordered to punish those who took adverse measures against the whistleblower due to the public interest report. In the current legal environment, the act is not classified as a crime, but by keeping the facts unchanged, the legislator orders the establishment of liability for violation of rules in the event of the conduct of

the offense.

The legal object of the crime is the social interest related to the undisturbed disclosure of behaviors and wrongdoings that violate the public interest, and through this, the purity of public life and the provision of the possibility of criticism. The act of committing a crime is the taking of a disadvantageous measure, which disadvantage can be financial, moral, or personal in nature, and it can be carried out openly or covertly.

The perpetrator takes a measure that is capable of causing disadvantage to the victim, the occurrence of the disadvantage is not a factual element.

The crime can only be committed intentionally, and it is typical to commit it with direct intent. The motive of the crime is also a factual element on the subjective side, as the act is factual only if the conduct of the offense is carried out due to the filing of a public interest report. (Molnár, 2016)

Results

The organization can enter into an assignment contract with a lawyer for the performance of tasks related to the reception and handling of reports for the continuation of whistleblower protection lawyer activities.

The assignment contract may not be concluded with a legal entity with which the whistleblower protection lawyer is in another legal relationship of assignment, employment, or other legal relationship involving the obligation to work, or with which he had such a legal relationship in the five years prior to the conclusion of the assignment contract.

In connection with this activity, the whistleblower protection lawyer may not request or accept remuneration or other benefits from anyone except the client.

The whistleblower protection lawyer must notify the regional bar association in writing within fifteen days of the establishment of the whistleblower protection lawyer assignment. The name, address, telephone number, e-mail address and website address of the whistleblower protection lawyer must be published on the website of the regional bar association.

The mandate of the whistleblower protection lawyer can only be terminated with a reason. The whistleblower protection lawyer's legal procedure cannot be the basis for the client's termination or the client's refusal to pay the commission fee due to the whistleblower protection lawyer.

From the point of view of the activities of the whistleblower protection lawyer, any signal that calls attention to a circumstance, the remedy or elimination of which would harm the client's legitimate interest or business interest that does not conflict with the law, or a violation of the law related to the client's activity, endangering public safety, public health or the environment, is considered a report.

Based on the assignment contract, the whistleblower protection lawyer

- a) receives notifications related to the principal's activities,
- b) provides legal advice to the notifier regarding the submission of the notification,

c) maintains contact with the notifier, may request information and clarification from him in order to investigate the report if necessary,

d) according to the order of the principal, he may cooperate in the conduct of the investigation initiated on the basis of the report, and

e) upon request, informs the reporter in writing about the events related to the report, especially the result of the investigation started based on the report, the action taken by the principal or the refusal to conduct the investigation.

The whistleblower protection lawyer forwards the report to the client, but with regard to the data enabling the identification of the whistleblower, sends the client an extract of the report that does not contain the data enabling the identification of the whistleblower, unless the whistleblower has given prior written consent to the transmission of his personal data.

If the report is related to the actions or omissions of the client's senior official, the whistleblower protection lawyer is obliged to notify the report's supervisory board, auditor, principal decision-making body or owner's rights practitioner of the report immediately.

The whistleblower protection lawyer is obliged to handle and keep records of the reports received in this capacity and their documents separately from his other activities. (Act 2023 XXV. on complaints, reports of public interest, and rules related to reporting breach 50-51. §)

An example of outsourcing and commissioning a whistleblower protection lawyer.

The breach reporting system is independent. The investigator cannot be a person who is connected to the act or person affected by the report. The effective operation of the whistleblower protection system would be questioned by the lack of impartiality.

In the case of an in-house breach reporting system, a separate unit should be created within the company and separate employees should be hired for this. This is much more expensive and it is more difficult to guarantee anonymity and impartiality.

Hiring a whistleblower protection lawyer ensures that the entire breach reporting process is handled and creates an opportunity to communicate anonymously with the whistleblower. In the system operated by the whistleblower protection lawyer's office - in accordance with legal regulations - each report is assigned a unique case number, traceable, and at the same time, its anonymity is guaranteed.

No two companies are the same, so the internal channel must also be adapted to the operation and needs of the company. The whistleblower protection lawyer's office can develop the notification channel either together with the employed IT professionals or even based on the online systems used on a daily basis.

In addition to the investigation of reports and legal protection, it is also important to support whistleblowers. In addition to maintaining contact, the whistleblower protection lawyer's office also provides assistance during communication with whistleblowers, in order to ensure complete discretion and protection for the business. (www.drandrisko.hu)

Conclusion

How should the internal reporting channel be established?

According to the law, the report in the internal breach reporting system can be made in writing or verbally, but the law does not contain any additional requirements regarding the type of reporting channel. Businesses can decide for themselves what type of channel to create.

Businesses must immediately start developing a GDPR-compatible system that operates on legal and IT bases, where the identity of the whistleblower is fully protected. If an breach reporting system already operates within the company, it must be reviewed and complied with the new regulations by the statutory deadlines.

Sanctions if the system does not function properly or reports are not properly investigated

If the company does not establish and operate an breach reporting system, thereby preventing the filing of the report, it may be subject to serious labor, administrative, or even criminal sanctions. In addition to the company, its senior official can also be held liable.

For the company the prohibition of further employment, the prosecution of the whistleblower, the legal status of violation is realized by the individual who takes adverse measures against the whistleblower as stipulated in the Complaints Act, or who prevents or attempts to prevent the filing of the report. In addition to these, the whistleblower can also turn to the public in the event that the company does not investigate the matter within the deadline, and depending on the violation, they can even initiate court proceedings.

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